



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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DISTRICT OF COLUMBIA

DA 99-1305

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON CONDITIONS PROPOSED BY SBC COMMUNICATIONS INC. AND AMERITECH CORPORATION FOR THEIR PENDING APPLICATION TO TRANSFER CONTROL

CC DOCKET NO. 98-141

Released: July 1, 1999

On July 1, 1999, SBC and Ameritech (collectively, Applicants) submitted the attached package of proposed conditions to the Commission in connection with their application to transfer licenses and authorizations. These proposed conditions are intended by the Applicants to address and mitigate concerns expressed in a letter from Chairman William E. Kennard to the Applicants dated April 1, 1999, that their merger, as initially proposed, raises significant issues with respect to potential public interest harms and questions about the claimed competitive and consumer benefits of the proposed combination.

Interested parties are invited to comment on these proposed conditions no later than **July 13, 1999** with the Commission's Secretary, Magalie Roman Salas, FCC, Room TW-A325, 445 12th Street, S.W., Washington, D. C. 20554. Oppositions or responses to these comments may be filed with the Secretary, FCC, no later than **July 20, 1999**. **All pleadings are to reference CC Docket No. 98-141.** Interested parties should file an original and eight copies. In addition, copies of each pleading should be sent to Janice M. Myles in the Policy and Program Planning Division, Common Carrier Bureau, FCC, Room 5-C327, 445 12th Street, S.W., Washington, D. C. 20554, and to the Commission's duplicating contractor, International Transcription Services, Inc. (ITS), 1231 20th Street, N.W., Washington, D. C. 20036. An additional copy of each pleading must also be served on all parties to the proceeding. The proposed conditions are available for inspection and copying during normal business hours in the FCC's Reference Center, Room CY-A257, 445 12th Street, S.W., Washington, D. C. 20554. Copies can also be obtained from ITS at 1231 20th Street, N.W., Washington, D. C. 20036, or by calling ITS at (202) 857-3800, or faxing ITS at (202) 857-3805.

Parties may also file comments using the Commission's Electronic Comment Filing System (ECFS). Comments filed through the ECFS can be sent as an electronic file

via the Internet to <http://www.fcc.gov/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get instructions for filing e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

For further information, contact: Bill Dever, Policy and Program Planning Division, Common Carrier Bureau, at (202) 418-1578. News media contact: Emily Hoffnar, at (202) 418-7396.

July 1, 1999

Ex Parte Presentation

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE.: In the Matter of Applications for Consent to the Transfer of Control of
Licenses and Section 214 Authorizations from Ameritech Corporation,
Transferor, to SBC Communications Inc., Transferee.
CC Dkt. No. 98-141

Dear Ms. Salas:

On July 24, 1998, SBC Communications Inc. ("SBC") and Ameritech Corporation ("Ameritech") filed joint applications under sections 214 and 310(d) of the Communications Act of 1934, as amended, requesting Commission approval for the transfer of control to SBC of licenses and authorizations controlled or requested by Ameritech or its affiliates or subsidiaries.

The Commission's review of this application has been exhaustive and comprehensive. On April 1, 1999, after nearly 8 months of review, Chairman Kennard wrote Richard C. Notebaert of Ameritech and Edward E. Whitacre, Jr. of SBC to highlight five issues of concern to the Chairman. Those issues were whether the merger would interfere with the opening of our markets, promote competition, impact benchmarking and benefit consumers and whether the public will promptly receive benefits of SBC's out-of-region National-Local Strategy. The Chairman asked that Ameritech and SBC pursue discussions with the Commission Staff to craft conditions addressing these public interest concerns.

Accepting the Chairman's suggestion, representatives of SBC and Ameritech have had long and detailed discussions with Commission Staff to reach common resolution of these public interest concerns. In addition, interested parties have made their views known in separate meetings with the Staff, in a public forum and through record submissions.

Based on these negotiations and input from third parties, the Commission Staff and the representatives of SBC and Ameritech have agreed upon conditions that comprehensively address all of the Chairman's concerns and provide additional assurance that the merger will bring immediate and substantial benefits to the public. As with any negotiations, the end result represents a series of commitments and concessions that has yielded a total integrated package of conditions which is a fair and balanced resolution of the issues. Moreover, the Commission Staff has specifically indicated that the package of conditions would satisfy their public interest concerns and lead them to support the proposed transfer of control. Consistent with the extraordinary level of public involvement throughout the Commission's review of the merger, we attach to this ex parte letter a complete copy of these voluntary conditions, so that interested parties can comment upon them.

As the attachment plainly demonstrates, the proposed conditions would provide substantial, broad-based benefits to wholesale as well as retail customers of the post-merger

SBC/Ameritech, which would not be available, absent the merger. These merger conditions are wide-ranging, self-executing and unprecedented in their scope, and they fully address each of the concerns raised by Chairman Kennard's April 1 letter. The following brief summary responds to the Chairman's five issues.

First, the proposed conditions are a comprehensive plan to make the in-region local telephone markets of SBC/Ameritech – across 13 States – the most open and competitive in the country. These conditions go well beyond the requirements of the Telecommunications Act of 1996, and they provide incentives to facilitate and accelerate competitors' entry. For example:

- **Operations Support Systems.** SBC/Ameritech will be required to provide uniform, electronic operations support systems ("OSS") interfaces, implement enhancements to the existing systems and provide increased support to small CLECs throughout its 13 states so that its competitors have OSS access equal to its own. SBC/Ameritech will also develop a common set of business rules across its 13 states for use by CLECs.
- **Structural Separation for Advanced Services.** To ensure nondiscriminatory treatment of competing providers of advanced services, SBC/Ameritech will be required to maintain a separate affiliate or affiliates to provide advanced services (such as ADSL) in the 13-State area where SBC/Ameritech operates as an incumbent LEC.
- **Unbundling and Combinations of Network Elements.** To provide its CLEC customers additional certainty as they enter the local market, SBC/Ameritech must continue to provide UNEs in each SBC State in accordance with the commitments made in the letter from Dale (Zeke) Robertson and Sandy Kinney of SBC to Lawrence E. Strickling, dated February 9, 1999. SBC/Ameritech must continue to provide UNEs in each Ameritech State in accordance with the commitments made in the letter from Barry K. Allen, Ameritech, to Mr. Strickling, dated February 11, 1999.
- **Collocation.** Ameritech and SBC will be required, before the merger closing, to provide the Commission with an independent auditor's review verifying that Ameritech and SBC have filed tariffs or offered standard contract terms, and have put in place methods and procedures to implement the collocation requirements of the Commission's First Report and Order in CC Docket No. 98-147, FCC No. 99-48 (released Mar. 31, 1999).
- **Access to Cabling in Multi-Dwelling Unit Premises ("MDUs") and Multi-Tenant Business Premises.** All new cables installed and controlled by SBC/Ameritech in new and retrofitted single-building MDUs and multi-tenant business premises will

have to be constructed and provided in a manner that would permit CLECs a single point of interface. In addition, SBC/Ameritech will be required to conduct a trial with CLECs in each of five large in-region cities to identify the procedures and associated costs required to provide CLECs with access at a single point of interface to SBC/Ameritech's existing cabling which it controls within MDUs and multi-tenant premises housing small businesses.

- **Most-Favored-Nation Provision for Out-of-Region Arrangements.** To provide additional assurance that SBC/Ameritech's in-region markets will be the most open in the country, SBC/Ameritech will be required to offer a most-favored-nation provision tied to its own out-of-region operations. Specifically, if a CLEC affiliate of SBC/Ameritech requests and obtains a UNE or interconnection arrangement from an incumbent LEC out-of-region that had not previously been offered by that incumbent LEC, then SBC/Ameritech's incumbent LECs will make available to CLECs in its service areas, through good-faith negotiation, the same UNE or interconnection arrangement on the same terms at a price negotiated or arbitrated on a State-specific basis.
- **Most-Favored Nation Provision for In-Region Arrangements.** To provide all carriers in SBC/Ameritech's 13 States additional options for entering local markets, SBC/Ameritech will be required, where technically feasible, to make available to any requesting telecommunications carrier, in any Ameritech State or SBC State, any voluntarily negotiated terms for interconnection arrangements or UNEs that are made available under any agreement approved after the merger closes in any other Ameritech State or SBC State at a price to be established on a State-specific basis pursuant to 47 U.S.C. § 252.
- **Regional Interconnection and Resale Agreements.** SBC/Ameritech will be required to offer to negotiate with any requesting telecommunications carrier an interconnection or resale agreement covering the provision of interconnection arrangements or UNEs in 2 or more SBC/Ameritech States designated by the requesting telecommunications carrier. Pricing under such a multi-state agreement will be established on a State-by-State basis and this option will be subject to certain technical and regulatory limitations.

As even this brief summary of some of the proposed conditions makes clear, far from interfering with Ameritech's and SBC's compliance with the market-opening requirements of the 1996 Act, a merger accompanied by these conditions will ensure that Ameritech and SBC greatly exceed the market-opening duties imposed by Congress.

Second, as an additional incentive for residential telephone exchange service competition in its local service territories, SBC/Ameritech will be required to offer carrier-

to-carrier promotions and to pay substantial penalties to CLECs if SBC/Ameritech do not provide them with nondiscriminatory service. In the SBC/Ameritech States, these promotions must consist of: (i) resale discounts for residential services starting at 32 percent off of the retail rate established by the relevant State commission; (ii) access to the UNE Platform under State-specific UNE pricing rules in all central offices, without regard to the outcome of the Commission's remand proceedings regarding Rule 51.319; and (iii) discounts on recurring charges for unbundled residential loops that will average 25 percent below the cost-based price set by the relevant state commission. SBC/Ameritech will also implement 20 performance measurements (based on measurements developed in the Texas collaborative process) in its 13 in-region states and will be required to make payments (which could total as much as \$1 billion over three years) to CLECs if it does not provide parity service or meet certain specified benchmarks.

Third, the proposed conditions would increase competition outside the 13 state region of SBC and Ameritech by requiring the post-merger SBC/Ameritech to roll out facilities-based local service, as a CLEC, in 30 markets selected from the 50 largest out-of-region U.S. markets. In the first 3 out-of-region markets, SBC/Ameritech's rollout of facilities-based local service must occur within one year of the merger. SBC/Ameritech must provide facilities-based local service in its first 15 out-of-region markets within 18 months of the merger. The remaining 15 markets must be entered the later of 30 months of the merger or upon SBC/AIT obtaining Section 271 long distance relief covering at least 60% of its in-region market, as measured by access lines. Thus, the proposed conditions will lead quickly to the sort of facilities-based local services competition that Congress had in mind when it passed the 1996 Act. The penalty for failure to meet the specified rollout schedule would be \$40 million per market, with a total potential exposure of up to \$1.2 billion.

Fourth, the proposed conditions would require the merged company to continue to report ARMIS data for different SBC/Ameritech operating telephone companies separately, to file additional service quality reports for the SBC/Ameritech States and to implement and report on 20 uniform, agreed-upon performance measurements, as well as pay damages to CLECs associated with these measurements, in the SBC/Ameritech States, thus addressing any "benchmarking" concerns.

Finally, the conditions will directly benefit SBC's and Ameritech's existing (and future) retail customers. In addition to the benefits to consumers that will result from the conditions described above, SBC/Ameritech would commit not to charge residential customers any minimum monthly charges for long distance service, such as those currently being levied by major interexchange carriers. The post-merger SBC/Ameritech also would be required to offer to improve the current universal service assistance Lifeline plans in the SBC/Ameritech states. SBC/Ameritech will further agree to a plan for rolling out advanced services equitably to lower-income urban and rural areas and to new reporting requirements regarding retail service quality.

Magalie Roman Salas

July 1, 1999

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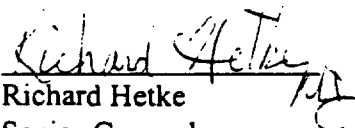
The proposed conditions also include stringent performance monitoring, reporting, auditing, and enforcement provisions that also go well beyond what the Commission has required of potential merger partners in the past. In the event that SBC/Ameritech does not satisfy certain key conditions, it would make payments for nonperformance that are far beyond what the Commission could require under the enforcement provisions of the Communications Act. SBC/Ameritech's payments for failure to meet the National-Local rollout schedule could total \$1.2 billion, deficient wholesale performance could be as high as \$1 billion over 3 years, and multi-million dollar penalties for failing to meet OSS commitments and other conditions could require the merged company to pay well over \$2 billion to the U.S. Treasury or designated public interest funds. These payments supplement the Commission's general enforcement powers under the Communications Act.

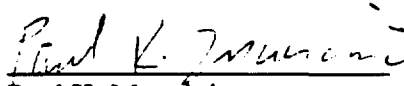
The conditions are the product of comprehensive negotiations and analysis by capable and knowledgeable representatives of the Commission, who have had the benefit of full public comment on the merger. We understand that the Commission's Staff has concluded that the proposed conditions would benefit consumers and competition, particularly by promoting facilities-based and residential local service competition, both within and outside SBC/Ameritech's 13 in-region States. Even more importantly, the Commission Staff has indicated that, in its view, these conditions would adequately ensure that the proposed transfer of control will be in the public interest.

While SBC and Ameritech will agree to the voluntary conditions set forth in the attachment to this letter, these conditions have been proposed, negotiated and accepted by the companies as an integrated, cohesive whole. Accordingly, they are not susceptible to piecemeal modification or expansion. Accordingly, SBC and Ameritech expressly reserve their right to withdraw their agreement to some or all of the proposed conditions if they are materially modified or added to.

The process used in this proceeding has been unprecedented and has been successful only as a result of the personal commitment, hard work and dedication of the professional Staff of the Commission. That effort is appreciated by the companies and we look forward to working with the Commission to complete the merger review process.

Yours Sincerely,


Richard Hetke
Senior Counsel
Ameritech Corporation


Paul K. Mancini
General Attorney
and Assistant General Counsel
SBC Communications Inc.

PROPOSED CONDITIONS FOR

FCC ORDER APPROVING

SBC/AMERITECH MERGER

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SBC/AMERITECH MERGER

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and Liquidated Damages and Voluntary Payments**

ATTACHMENT A-4: Liquidated Damages Table for Tier-1 Measures

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ATTACHMENT A-6: Monthly and Annual Caps

ATTACHMENT B: Model Collocation Attestation Report

ATTACHMENT C: Charges for xDSL Conditioning Services

ATTACHMENT D: Letters to FCC Regarding UNE Offerings

ATTACHMENT E: Alternative Dispute Resolution

ATTACHMENT F: Potential Out-of-Region Markets